IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 1259 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 30.04.2004 in W.P.No:3053 of 2004 on the file of the High Court.)

Between:

1 Chintakayala Venkata Raman Mohana Rao, S/o. Late Satyanarayana Rao, R/o. 22-40-1, Chintakayalavari Street, Visakhapatnam-530 001.
2 Chintakayala Sivasankara Rao, S/o. Late Satyanarayana Rao, R/o. 22-40-1, Chintakayalavari Street, Visakhapatnam-530 001.
3 Chintakayala Amareswara Rao, S/o. Late Satyanarayana Rao, R/o. 22-40-1, Chintakayalavari Street, Visakhapatnam-530 001.
4 Allepalli Malathi, W/o. Krishna Rao, Chintakayalavari Street, Visakhapatnam.
5 Surada Sowdhamini, W/o. Suryanarayana Murthy, Chintakayalavari Street, Visakhapatnam.
6 Yerupalla Girija, W/o. Dharma Raju, Chintakayalavari Street, Visakhapatnam.

..... APPELLANT(S)

AND

1 The Mandal Revenue Officer, Pedagantyada, Visakhapatnam District.
2 The Joint Collector and Settlement Officer, Visakhapatnam.

.....RESPONDENT(S)

Counsel for the Appellant: MR.B.VIJAYSEN REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

HONOURABLE SRI JUSTICE B.SUDERSHAN REDDY

AND

HONOURABLE SRI JUSTICE K.C.BHANU

W.A.No.1259 of 2004

JUDGMENT: (Per K.C.B.,J.)

This writ appeal is directed against the order dated 13.4.2004 in W.P.3053 of 2004 passed by the learned single Judge of this Court dismissing the writ petition holding that no error apparent on the face of the impugned order of the appellate Court was committed warranting interference by this Court.

The appellants herein filed a writ petition to issue a writ, order or direction more particularly one in the nature of Certiorari to call for records in T.A.No.1 of 1997, dated 22.8.2003 on the file of the Estate Abolition Tribunal-cum-District Judge, Visakhapatnam, whereunder, the orders of the 2nd respondent-Joint Collector and the Settlement Officer, Visakhapatnam, in his proceedings dated 8.5.1997 in S.R.No.15 (105/94) are confirmed.

The brief facts that are necessary for the purpose of disposal of this appeal may be delineated as follows:

The appellants herein filed a petition under Section 15(1) of the A.P. Estate Abolition Act for grant of ryotwari patta to an extent of Ac.2083.09 cents in S.Nos.248 and 274 situated in Dibbapalem, H/o.Pedagantyada village. The 2nd respondent dismissed the petition by his proceedings dated 8.5.1997. The petitioners-appellants preferred T.A.No.1/1997 before the Estate Abolition Tribunal-cum-District Judge, who dismissed the same on 22.8.2003. It is stated that Ac.2083.09 cents in S.Nos.248 and 274 formed part of the Zamindari of Maharaja of Vijzianagaram. The said lands were transferred by the

Maharaja of Vijzianagaram in favour of one Mac Murray in lieu of the lands given by the Maharaja of Vijzianagaram. Mac Murray was involved in the debts and to discharge the same executed an usufructuary mortgage in favour of Tiyyala Shankaraiah. The debt was not discharged and therefore, mortgagee obtained a decree in O.S.No.37 of 1981 on the file of District Court, Visakhapatnam. To satisfy the decree, the subject lands known as “Shara Thota” were sold to the ancestors of the petitioners for a sale consideration of Rs.4000/-. The ancestors of the petitioners purchased the lands on 15.8.1883 from Mac Murray. The Maharaja of Vizianagaram recognized the ancestors of the petitioners as owners of the said land and he was collecting rent from them. After Estate Abolition Act has come into force, the Government recognized the right of the petitioners and the land revenue was being collected from them. The petitioners paid land revenue in respect of the land for faslis 1343, 1344, 1345, 1346, 1348, 1349 to 1385. The ancestors of the petitioners were in possession of the said land, which was in their personal cultivation. It is stated that there was no notice to the ancestors of the petitioners with regard to the survey conducted by Gillman in the year 1904 and therefore, the survey was not in accordance with the provisions of the Madras Survey and Boundaries Act. All the fruit bearing trees in the schedule land have been planted and maintained by the ancestors of the petitioners, who are cultivating the land. Hence, they filed the writ petition.

The learned counsel Sri B.Vijaysen Reddy appearing for the appellants-petitioners has contended that the ancestors of the appellants have been in continuous possession and enjoyment of the property and as they purchased the property on 15.8.1883 for a consideration of Rs.4,000/- they are entitled to the grant of ryothwari patta in terms of Section 15(1) the Estates Abolition Act and the Tribunal as well as the original authority committed an error in not considering the documents filed by the appellants. He also contends that when the survey was conducted by Gillman in the year 1904, no

notice was given to the ancestors of the appellants and the survey conducted was an *exparte* survey and therefore, no importance can be attached to the survey conducted by Gillman. The right, title and interest of the appellants have been recognized by the then Zamindar of Vijayanagaram. Hence, he prays to set aside the order under appeal.

On the other hand, the learned Government Pleader for Revenue has contended that the sale deed upon which the petitioners placed reliance to claim the land discloses only Ac.100.00 cents; and in respect of the said land the Government already gave patta to the petitioners-appellants and except that document, they have not filed any material to show that they are either the owners of the property or in continuous possession of an extent of 2000 and odd acres and therefore, they are not entitled for any ryothwari patta. The original Tribunal rightly dismissed the claim of the writ petitioners and the appellate Tribunal confirmed the same and this Court also confirmed the concurrent findings arrived at by the Tribunals. Hence, there are absolutely no grounds to interfere with the judgment under appeal.

It is not in dispute that this Court while exercising the jurisdiction under Article 226 of the Constitution of India can interfere with the Subordinate Courts and Tribunals where;

a. *There is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard to the provisions of the law and;*

b. *A grave injustice or gross failure of justice has occasioned thereby.*

It is also well settled that while exercising the power of judicial review, this Court is more concerned with the decision making process than the merit of the decision itself, but while examining and scrutinising the decision making process, it becomes inevitable also to appreciate the facts of the given case as otherwise, the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. Therefore, to a limited extent of scrutinizing the decision

making process, it is always open to this Court to review the evaluation of the facts by the Tribunal as well as the appellate Court.

It is not in dispute that the lands situated in Padagantyada village was a Zamin Estate notified and taken over by the Government under Section 1(4) of the Estate Abolition Act, 1948 on 7.9.1949. The village was initially surveyed in the year 1904. According to Gillman's survey and settlement register of Pedagantyada village of Vizianagaram Samsthanam, old S.Nos.173 and 269 measuring Ac.2.14 cents and Ac.2097.33 cents stood classified as Gedda Poramboke and Hill Poramboke. After the abolition of the estate, the survey and settlement operations were conducted during the years 1955 to 1958. By virtue of the provisions of the Estate Abolition Act, the schedule lands as claimed by the appellants stand transferred to Government free from all encumbrances under Section 3(b) of the Estate Abolition Act.

To substantiate the case of the petitioners, two witnesses were examined and 55 documents were marked. On behalf of the respondents, no evidence was let in, but three documents were marked.

The Settlement Officer, upon appreciation of the evidence on record, held that the lands in question are not covered in any of the documents filed by the petitioners and therefore, the claim of the appellants was dismissed. The appellate Court also found that the appellants do not have any right in the land in S.Nos.269 and 269/2 (old) corresponding to resurvey Nos.274 and 271/1. The learned single Judge of this Court held that once the classification of the lands in Gillman register is recorded in the survey and settlement record, presumption as to the correctness has to be drawn and none can be allowed to dispute the entries much less after a lapse of 100 years. The survey conducted by Gillman in 1904 revealed the natural classification of the lands in question and the lands in respect of which the appellants are claiming ryothwari patta are classified as Gedda Poramboke and Hill Poramboke. Except bald allegation in the

affidavit that no notice was given when the survey was conducted in the year 1904, nothing has been brought out on record to show that the survey was conducted behind the back of the ancestors of the petitioners and the classification of the lands in question for over 100 years is unchallenged by anybody including the petitioners. So, at this point of time, the survey conducted in the year 1904 cannot be upset on the ground of lack of notice to the ancestors.

In the first instance, the petitioners must establish that the lands in which the appellants are claiming for grant of ryothwari patta have got title to their predecessors and their predecessors had been in continuous possession and enjoyment of the property and thereafter the present appellants have been in continuous possession and enjoyment of the property. They filed Exs.P1 to P4 sale deeds. Ex.P1 and P2 are one and the same which relate to an extent of Ac.100.00 cents only. Ex.P5 also indicates that the extent involved in the said document is only Ac.100.00 cents. But, surprisingly, Exs.P6 to P18 are Kadapas covering an extent of Ac.1062.05 cents under Patta No.63 and they are not proved by any person. It is not known how such a large extent of more than Ac.2100.cents was mentioned in those documents. Certain land revenue receipts such as Exs.P19, P21, P25, P26, P28 and P29 were paid in respect of old Patta No.63 corresponding to old S.Nos.175/1 and 168/1. The documents Exs.P20, P22, P23, P24 and P27 relate to the same patta No.63. So also, Exs.P32 to P46 relate to land in old patta No.63 and Exs.P47, P48 and P49 relate to old patta No.63. Basing on the documentary evidence, the Settlement Officer held that the lands now claimed to an extent of Ac.2083.09 cents was not covered under patta No.63. Therefore, those documents are not at all relevant for the purpose of granting ryothwari patta in respect of the total extent of Ac.2083.09 cents. It is not shown or stated by the learned counsel for the petitioners that the finding given by the Settlement Officer as confirmed by the Estate Abolition Tribunal is not shown to be perverse or not based upon the material produced by the parties. Basing on the evidence available on record, the Settlement Officer

held that the appellants are entitled to right, title and interest to an extent of Ac.100.00 cents covered by resurvey numbers under patta Nos.150 and 152. There are other lands registered in the name of either Mac Murray or the predecessor of the petitioners. Therefore, the predecessors of the appellants presumed to have purchased an extent of Ac.100.00 cents of lands for which a ryothwari patta was already given. There cannot be any dispute that ryothwari pattas would be granted to the extent, which is under the occupation and enjoyment of the petitioners.

A feeble attempt has been made by the learned counsel for the appellants that the boundaries prevail over if there is some discrepancy over the actual extent of land. The said point has been raised before the Estate Abolition Tribunal by citing a decision reported in the case of **CH.PERRAJU Vs. YEDNAPURI YENKAMMA** and the said contention was not accepted by the Tribunal on the ground that in case of small fractions of land, the said principle can be applied. Therefore, the decision is not helpful to the petitioners. The documents which are filed by the petitioners would go to show that they have at best got right and title in respect of Ac.100.00 cents of land only, but the appellants claim more than Ac.2000 cents. In such circumstances, the question of principle that the orders will prevail over the actual extent of land does not arise. In the present facts and circumstances of the case, the decision relied upon by the learned counsel for the appellants which was also referred to by the Estate Abolition Tribunal has no application.

Ex.R1 is the Gillman register prepared in the year 1904 wherein, the lands covered by old S.Nos. 175 and 268/1 are classified as zeroyithi dry lands registered as patta No.63 in the name of Mac Murray Dora. These old S.Nos.175 and 268/1 are correlating to S.Nos.274 and 268/1 respectively and were granted ryotwari patta Nos.150 and 152 in the name of Chintakayala Satyanarayana Rao. The remaining lands covered by S.No.268/1 to an extent of Ac.10.38 cents and

S.No.269 to an extent of Ac.2097.93 cents are classified as Banjar and Poramboke lands and the same were recorded in the revenue records. Ex.R2 is the copy of the settlement fair Adangal and Ex.R3 is the copy of Adangal, which show about the classification of lands.

Upon review of the evaluation of the facts as mentioned hereinbefore, the orders of both the Settlement Officer and then Estate Abolition Tribunal do not suffer from any illegality, irrationality or procedural impropriety. The review of evaluation of facts had been taken up by this Court to test or scrutinize the decision making process.

Viewed from any angle, the judgment under appeal does not suffer from any incurable infirmities or illegalities or factual errors so as to call for interference by this Court. In our considered opinion, the appellants made a speculative claim without there being any material. Therefore, the writ appeal deserves to be dismissed.

Accordingly, the Writ Appeal is dismissed. In the circumstances of the case, there shall be no order as to costs.

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(B.SUDERSHAN REDDY,J.)

17th September, 2004.

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(K.C.BHANU,J.)

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To

1 The Mandal Revenue Officer,
Pedagantyada, Visakhapatnam District.
2 The Joint Collector and Settlement Officer, Visakhapatnam.

3 Two C.Cs. to the Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT)

4 Two C.D. copies